IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.3.2007

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.PD Nos.1861 and 1862 of 2004

Munian .. Petitioner in both C.R.Ps./Petitioner

vs.

Kunnan .. Respondent in both C.R.Ps./Respondent

Revision Petitions filed under Article 227 of the Constitution of India against the orders dated 4.11.2003 passed in in I.A.Nos.248 and 368 of 2003 in O.S.No.97/1997 respectively, on the file of the District Munsif-cum-Judicial Magistrate, Tirukazhukundram.

For Petitioner : Mr.R.Bharath Kumar, for M/s.K.Govi Ganesan

For Respondent : Mr.K.Hariharan

COMMON ORDER

These Revision Petitions have been filed against the order dated 4.11.2003 passed in in I.A.Nos.248 and 368 of 2003 in O.S.No.97/1997 respectively, on the file of the District Munsif-cum-Judicial Magistrate, Tirukazhukundram.

2.The 1st defendant in O.S.No.97/1997 is the revision petitioner in both the revision petitions and he is aggrieved by the dismissal of the two applications filed by him in I.A.Nos.248 and 368 of 2003.

3.In I.A.No.248/2003, the 1st defendant sought the leave of the trial court to receive two documents dated 1.9.1999, which are certified copies of the sale deeds executed in his favour by the two wives and the son of the second defendant.

4.In I.A.No.368/2003, the 1st defendant wanted the trial court to admit the document, i.e., an unregistered family arrangement dated 25.10.1990 as an exhibit on his side.

5.The trial court by order dated 4.11.2003 dismissed I.A.No.248/2003 on the ground that it is doubtful as to the claim of

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the 1st defendant that he lost both the sale deeds of the year 1999 and the certified copies of the sale deeds are not helpful for comparing the signatures of the executants of the sale deeds.

6.I am unable to accept the reasons given by the trial court for rejecting I.A.No.248/2003. First of all, when a petition is filed to receive the documents belatedly, those documents are to be received subject to proof and relevancy and the admissibility of the documents should be gone into at the time of marking the same as exhibits. Till such time, the court is not expected to go through the admissibility of the document as the scope of the petition is to condone the delay and to receive the documents.

7.Therefore the trial court is wrong in going into the admissibility of the certified copies of the sale deeds dated 1.9.1999 at the time of receiving the documents. (Emphasis supplied).

8.In 2005(5) CTC 102 (Gurusamy v. Santhanam), this court held that there cannot be any difficulty in receiving the document for the purpose of marking the same in evidence and it is always open to the other party to raise admissibility of the document at the time of marking the same as exhibits.

9.In the result, C.R.P.PD.1861/2004 is allowed and the trial court is directed to receive the documents mentioned in I.A.No.248/2003 and it is open to the plaintiff to raise the admissibility of the documents at the time of marking the same as exhibits.

10.The trial court dismissed the other I.A.No.368/2003 on 4.11.2003 on the ground that the family arrangement dated 25.10.1990 itself created the rights to the 1st defendant and the same is unstamped and unregistered.

11.I am of the considered view that the trial court has rightly dismissed I.A.No.368/2003. When the family arrangement dated 25.10.1990 itself created the rights in favour of the 1st defendant, the same is to be adequately stamped and duly registered. Otherwise, the same cannot be looked into even for collateral purposes.

12.In 2001(1) CTC 112 (Lakshmipathy, A.C. v. A.M.Chakrapani Reddiar), a Division Bench of this court held that if the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act. The Division Bench held that if the family arrangement is adequately stamped but not registered, it can be looked into for collateral

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purposes and a family arrangement which is neither adequately stamped nor registered, cannot be looked into for any purpose in view of the specific bar in Sec.35 of the Indian Stamp Act.

13.In the present case, as the family arrangement dated 25.10.1990 has not been adequately stamped and not registered, the trial court has rightly held that the same cannot be marked as exhibit on the side of the 1st defendant even for collateral purpose.

14.Hence I find no merits in C.R.P.PD.No.1862/2004 and the same is dismissed. No costs.

15.In the result, C.R.P.PD.1861/2004 is allowed and C.R.P.PD.1862/2004 is dismissed. No costs. C.M.P.No.17615/2004 and V.C.M.P.No.7114/2005 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sks

To

The District Munsif-cum-Judicial Magistrate,
Tirukazhukundram.

+1cc to Mr.K.Govi Ganesan, Advocate Sr 13830

+1cc to Mr.K.Hariharan, Advocate Sr 13980

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